IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
LAND ACQN. REFERENCE NO. 22 OF 1987

Special Land Acqn. Officer,
Maharashtra Housing & Area
Development Authority, Griha
Nirman Bhavan, Ground Floor,
Room No. 45, Bandra (E),
Bombay 400 051.

AND

1. Shri/Smt Stanny Jerom Coria,
2. Anslam Jerom Correia,
since deceased by L.R.s
2a. Mrs. Angela wife of Anslam
2b. Savie Anslam, aged 5 through
his guardian mother Mrs. Angela
3. Patrick Jerom Corria,
4. Agnes Rena, since deceased by
her L.R.s at Sr. No. 1 to 3 &
5 & 7.
5. Miss. Clara Anthony Bhoreia,
Age 29, Occupation : household,
residing at 173, Correia House,
S.A. Road, Oshiwara, Jogeshwari
(West), Mumbai 400 102.

6. Mrs. Exina Petrick D'Souza,
7. Jullie Jerom Corries,
8. Annie Wife of Jerrom,
since deceased by her legal
representatives at S. NO. 1 to
3 and 5 and 7.

All residing at 173, Correia House,
S.V. Road, Oshiwara, Jogeshwari (West),
Bombay 400 102. ...Claimants

Ms. S.M. Dandekar, A.G.P. for S.L.A.O. &
Acquiring Body.

Dr. Kamal Velankar for Claimants.

CORAM : A.M. KHANWILKAR,J.
DATED : JUNE 13, 2005

ORAL JUDGMENT

1. This Reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act), is filed as a consequence of the award passed by the Special Land Acquisition

Officer, Maharashtra Housing and Area Development Authority, Bombay dated 22.9.1986 in relation to the land bearing S. No. 32, Hissa No. 6, admeasuring 23 gunthas, Survey No. 32, Hissa No. 13 admeasuring 4 gunthas, S. No. 37 Hissa No. 9 admeasuring 8 gunthas and S. No. 32, Hissa No. 7 part admeasuring 4 gunthas aggregating 39 gunthas which was jointly owned by Stany Jerom and others. The background in which the said Award came to be passed is as follows :

2. The Housing Commissioner, Maharashtra Housing Board, Bombay requested the Commissioner, Bombay Division, Bombay and the Land Acquisition Officer to acquire certain lands from village Oshivara, Taluka South Salsette. As a consequence of the said request, the Commissioner, Bombay Division under his LAQ/B-1532 dated 8th March, 1960 directed to send a proposal to draft Notification under Section 4 in respect of several lands which included above numbered lands. After completing preliminary enquiry with the Mamlatdar, South Salsette, initially certain lands were proposed to be acquired under Section 4 of the Act and notification in that behalf came to be published in Maharashtra Government Gazzette Part I dated 28.4.1960 at Page 1092. The above numbered land form part of the lands referred to in the said notification. Thereafter, upon complying with

necessary formalities, Section 6 notification came to be published in Maharashtra Government Gazette Part I dated 3.1.1966 read with Commissioner Bombay Division notice dated 11.6.1966. Section 6 notification also makes reference to the above numbered lands which are subject matter of the present Reference. Thereafter joint measurement of the land was undertaken, when it was noticed that the additional lands were also required to be notified. We are not concerned with the said process in the present proceedings. Suffice it to observe that after section 6 notification with regard to the suit lands, an enquiry was held by the land Acquisition Officer and after following necessary procedure and giving opportunity to the interested persons by issuing individual notice, Land Acquisition Officer eventually proceeded to pass the Award in question. As mentioned earlier, large tract of land was proposed to be acquired by the Acquiring Body. The Land Acquisition Officer therefore, thought it proper to apply belting system. The lands which were abutting to Ghodbandar road were placed in belt No. 1. The lands which were between 700 to 1000 ft. away from Ghodbandar road were placed in Belt No. 2. Similarly the lands proposed to be acquired which were 1000 to 1300 ft. away from Ghodbandar road were placed in Belt No. 3. Whereas, the lands situated about 1300 to 1680 ft. away from

Ghodbandar road were placed in Belt No. 4. The above numbered lands (suit lands) were placed under belt No. 4 by the Land Acquisition Officer. The claimants in respect of lands falling under Belt No. 1 had produced sale instances to support their claim for determining the market value of their lands. Considering several instances produced by the said claimants, the Land Acquisition Officer, after discarding the instances which were after the issuance of section 4 notification, found that the lands falling under Belt No. 1 should get market value at the rate of Rs.15 per sq. yard. Thereafter applying deduction upto 2/3rd of the value of the 1st belt, the land situated within the belt No. 2 were granted Rs.10/- per sq. yard. Applying the same principle, land falling under belt No. 3 were recommended to be acquired at the rate of Rs.7.50 per sq. yard. Applying the same principle, the Land Acquisition Officer has found that the lands falling under Belt No. 4 should be granted market value at the rate of Rs.6.50 per sq. yard. He however, observed that the lands falling in belt No. 4 though did not have access from Ghod Bandar Road, have access from other approach road leading from Ghodbandar road. For that reason, recommended additional 0.50 ps. and proposed acquisition of the said lands at the rate of Rs.7/- per sq. yard. The proposal of the land Acquisition Officer on the above basis was

considered by the competent authority who in turn was of the view that the lands falling in 4th belt should not exceed market value at the rate of Rs. 6/- per sq. yard. On the basis of the said view taken, the Land Acquisition Officer proceeded to pass the award in question. In so far as above numbered lands are concerned, as the same fall in 4th belt, the market value thereof has been fixed at the rate of Rs.6/- per sq. yard. The Land Acquisition Officer in the impugned Award has granted benefit of the provisions of the Land Acquisition (Amendment and Validation) Act, 1967 as well as Land Acquisition (Amendment) Act,1984 to the claimants. The market value of the land has been computed at the rate of Rs.6/- per sq. yard. The total area of the above numbered land is stated to be 39 gunthas, which is equal to 4917 sq. yards. The market value has been computed as Rs.28,314/- . The additional interest at the rate of 6% from 28.4.1963 to 22.9.1986 has been computed in the sum of Rs.39,757.55. Further amount has been added at the rate of 12% on market value from 28.4.1960 to 22.9.1986 being Rs.89,708.18 and solatium amount at the rate of 30% on the market value being Rs.8494.20. The total amount under the Award in respect of the suit land is determined as Rs.1,66,273.93. It appears that the possession of the suit land has been taken over thereafter on 19.10.1986.

3. As the original owner was not satisfied with the award passed by the Special Land Acquisition Officer determining the market value only at the rate of Rs.6/- per sq. yard., preferred application before the Special Land Acquisition Officer who in turn has presented the Reference under Section 18 of the Act before this court for determination of the amount of compensation to be awarded in respect of the said lands. The claimants have adduced oral as well as documentary evidence. During the pendency of this Reference, before this court, the cause title has been amended to bring on record the other claimants including the heirs and legal representatives of the deceased claimant. Accordingly the present Reference is proceeded by the claimants who are brought on record by way of amendment. One Stany Jerom has deposed on behalf of the claimants. He has filed an affidavit in lieu of evidence sworn on 11.10.2004. In addition, evidence of Mr. Wadke, a registered Valuer has been relied upon by the claimants. Affidavit in lieu of evidence of Wadke dated 19.4.2005 has been filed on record. Both these witnesses have been cross examined for and on behalf of the S.L.A.O. The claimants have produced on record the documents which have been admitted by the S.L.A.O. and marked as Exh. C1 to C11. No evidence has been adduced on behalf of S.L.A.O.

4. In the Reference application the claimants have asserted that they are entitled for compensation at the rate of Rs.36/- per sq. yard. That stand is maintained in the evidence of Stany Jeron. However, the witnesses examined on behalf of the claimants i.e. Mr. Wadke, registered valuer has confined the market value of the lands at the rate of Rs.16/- per sq. mtrs which is equal to Rs.13.38 per sq. yard. The valuation done by the registered valuer Shri. Wadke is on the basis of four instances which are produced on record during the course of evidence.

5. On the basis of the rival stand, the issues that arise for my consideration are as follows:

(i) Whether the market value of the suit land determined by the S.L.A.O. at the rate of Rs.6/- per sq. yard is proper?

(ii) If not, what should be the fair market value of the said land?

(iii) What order?

6. After going through the records and proceedings, with the assistance of the counsel appearing for the parties, and considering their

oral submissions, I shall proceed to answer all the issues together. I shall first advert to the background in which the Land Acquisition Officer proceeded to determine the market value of the suit land at the rate of Rs.6/- per sq. yard. As mentioned earlier, the note prepared by the Land Acquisition Officer, which was sent for consideration of the competent authority, recommended the fair market value of the suit lands at the rate of Rs.7/- per sq. yard. The Land Acquisition Officer while referring to several instances, has in the first place determined the market value of the land falling within first belt. Thereafter S.L.A.O. applied deduction at the rate of 2/3 of the value of the land of the first belt on which basis the value of the land with regard to belt No. 2, 3 and 4 respectively has been arrived at. In so far as lands falling in belt No. 4, it has been clearly observed in the note that though there is no access to these lands from Ghodbandar Road, there is approach road to the land from other side. It is on that basis, the S.L.A.O. recommended the fair market rate in respect of the suit lands at the rate of Rs.7/- per sq. yard. The said recommendation however, did not meet approval of the competent authority who in turn wanted the fair market price in respect of the suit lands to be fixed at the rate of Rs.6/-. Obviously, the Award is founded on the opinion of

the competent authority. For no specific reason has been stated in the award as to on what basis the fair market price of the suit land which fall within the belt No. 4 can be fixed at Rs.6/- per sq. yard only.

7. As mentioned earlier, Stany Jeron has entered the witness box for and on behalf of the claimants. In Para 10 of his examination in chief, he asserts that the market value adjudicated by the land Acquisition Officer is less considering the fact that the lands were situated half kilometre from Jogeshwari Railway Station below and were ideal for construction of buildings for industrial, commercial as well as residential purposes. He further asserts that all infrastructural facilities such as road, electricity, water and transport were readily available for the said lands at the relevant time. On that basis he claims that the compensation be determined at the rate of Rs.36/- per sq. yard. In his evidence he has not referred to any instance or any evidence to justify the claim of compensation at the rate of Rs.36/- per sq. yard. This witness has been cross examined on behalf of S.L.A.O. He has been confronted with the position that the distance of the said land was half mile from Jogeshwari Railway Station and not half kilometre as stated by him. He was again confronted with the fact that in 1960 there was no

construction either on the land in question or surrounding areas thereto or any basic facilities in the nature of electricity, approach road, transportation at the relevant time. This position has been accepted by him in following words :

> "In 1960 the land in question did not have any construction either on the land in question or surrounding area thereto. It is true that in 1960 there were no facility in the nature of electricity, approach road, transportation were available to the acquired land."

. He was then confronted as to on what basis he claims the rate for the suit lands at the rate of Rs.36/- per sq. yard. That question was put by the Court to which he replied that he does not have any basis to show how he has claimed Rs.36/- per sq. yard. In my opinion, this evidence is of no avail to the claimants to establish their claim for enhancement.

8. The next evidence is that of Bhalchandra Wadke, the registered Valuer. He has referred to instances which according to him are relevant and ought to be taken into account. In substance, he has stated that if those instances are to be taken into account, the value of the land of the claimant

would be Rs.16/- per sq. mtr. i.e. Rs.13.38/- per sq. yard (see page 8 of examination in chief). In Para 9 of his examination in chief he has referred to the contents of the valuation report of the S.L.A.O. and has stated that although in the report the land belonging to the claimants have been valued at Rs.7/- per sq. yard., in the Award the same is valued at Rs.6/- per sq. yard without mentioning any reason to do so. Finally, this witness has stated in Para 9 of his evidence that the land of the claimants deserves to be valued at Rs.13/- per sq. yard. This witness has been cross examined on behalf of the S.L.A.O. He has been confronted with the four instances which have been referred to and relied upon before this court. However, in the entire cross examination no question has been put to this witness in the context of his assertion in the chief that the award does not spell out any reason to determine the fair market value of the land at the rate of Rs.6/- per sq. yard. instead of Rs.7/- per sq. yard. as was recommended in the original report. I shall presently deal with the relevant evidence of this witness while considering four instances.

9. The first instance which has been pressed into service is in respect of village Amboli which is touching the land of Oshiwara village under acquisition. The area of the said instance is

stated to be 1355.22 sq. mtrs. i.e. 1620 sq. yards. The consideration was fixed on 5.11.1959 for Rs.64,051/-. The evidence however, clearly states that there is a building and well on the said land. The details regarding nature and area of the building are not available. The witness then proceeds to explain that he has considered that approximately half the price would be for the land and other half for the building, and therefore, the rate would work out to Rs.19.77 per sq. yards. In the cross examination, this witness has been confronted as to when he had visited the site for the first time, to which he has answered that he had visited the site in the year 1995 after he was engaged by the claimants for the purpose of valuation of the land. He further accepts that he has no personal information as to the status of the suit lands as in the year 1960 when section 4 notification came to be issued on 22.4.1960. He states that he has given evidence on the basis of information provided to him by the claimants. He has stated that in 1960 though there were no amenities on the acquired land, the same were available in the nearby vicinity of the acquired lands, which statement was again made on the information provided by the claimants. In so far as first instance relied upon and referred to above, he was confronted as to what was the distance between the said land and the suit lands.

He has stated that he had no details about the said position as he had no map with him when he visited the site. He has also conceded that he has no details about the situation of the land (1st instance) and the distance of the suit lands or for that matter any particulars about the distance between Amboli village and Oshiwara village. He has not explained the basis on which he has provided deduction of 50% on the consideration amount to exclude the cost of building standing on the land so as to deduce the market value of the said land. He has also conceded that he has no information about the actual built up area or other details about the building standing on the said land. On all these facts, although the first instance is of 5.11.1959, cannot be taken into consideration and/or said to be a comparable instance. The evidence as adduced is not sufficient to treat the said instance as comparable instance. On the contrary, the claimant's witness has conceded the position that he was not in a position to provide relevant information as referred to above. More over, the basis on which Valuer Wadke has deducted 50% of the consideration amount, so as to arrive at the fair market value of the said land, has not been explained at all. Accordingly, this instance is of no avail to the claimants in persuading this court to take the same

as a comparable instance.

10. That takes me to the second instance which is of village Oshiwara. The sale deed is executed on 31st March, 1965, which is after section 4 notification. The witness however, has stated that in the said instance, the agreement was arrived at between the parties on 8.1.1961. That the consideration agreed upon between the parties for the area of land admeasuring 455.08 sq. mtrs. i.e. 544 sq. yards would work out to Rs.10.98 per sq. mtr. i.e. Rs.9.19 per sq. yard. In the cross examination the witness has accepted that the sale deed is executed five years subsequent to the date of section 4 notification. He has also accepted that the area of the land referred to in the second sale instance is 455.08 sq. mtr. only. He has also conceded that the area of the second sale instance is much lesser than the area of the acquired lands. He has accepted that ordinarily the price of the smaller area is more than the larger piece of land. He however, justified the claim of higher market value on the basis of second sale instance on the reasoning that even the suit lands were small pieces of land as have been notified under Section 4. From the evidence which has been adduced by the claimant, in my view, it is clear that the second sale instance also cannot be taken into consideration for more than one reason. In the first place, the said transaction, assuming

has taken place on 8.1.1961, is almost about one year after section 4 notification which came to be issued on 20.4.1960. It is common knowledge that after section 4 notification there is always spurt in the market value of the nearby lands. In that sense, rise of about Rs.2/- per sq. yard in about one years time, after issuance of notification under Section 4 of the Act is inevitable. Secondly, the second sale instance, as has been accepted, is a smaller plot of land admeasuring only about 455.08 sq. mtrs. which comes to 544.sq. yards. Viewed in this perspective, even if the said sale instance is about eight months after the issuance of section 4 notification, it cannot be the basis to straight away grant enhancement at the rate of Rs.9/- per sq. yard. Suffice it to observe that the second sale instance will be of no avail to the claimants.

11. The claimants then rely on third sale instance which is from village Pahadi-Goregaon, which according to them, is touching village Oshiwara, which is dated 12.12.1960. The sale deed has however, been executed on 2.1.1961. The evidence of the valuer clearly concedes the position that there is standing building on the said land and that the Valuer is not aware of the details of the area etc. of the said building. The consideration in respect of the third sale instance which is land

admeasuring about 719.4 sq. yards and the rate works out to Rs.39.46 per sq. mtr i.e. Rs.33.1 per sq. yard. The Valuer has applied deduction of 50% of the consideration amount for deriving the market value of the said land (in the third sale instance) to be around Rs.16.50 per sq. yard. Once again, the witness has been confronted in the cross examination on the similar lines as in respect of first sale instance which was from village abutting to village Oshiwara. In other words, in so far as the third instance is concerned, the sale is not from village Oshiwara but neighbouring village - but no details are forthcoming as to the proximity of the said land with the suit lands with which we are concerned. Besides, it is conceded by the claimants that there is building standing on the land which came to be sold for total consideration of Rs.23,751/-. The basis on which the valuer has provided the deduction of only 50% being the cost of the building, has not been explained. For the same reason, as obtained in respect of the first sale instance, this sale instance also will have to be discarded. Besides, this instance is after the issuance of section 4 notification for which reason also the same cannot be said to be a comparable instance.

12. That takes us to the forth sale instance

referred to in the evidence of Valuer which is also from the village Pahadi-Goregaon and sale deed was executed on 29th May, 1961. The agreement entered into between the parties for the said instance on 24.2.1961 in respect of the land admeasuring 1694.5 sq. yards for the total consideration of Rs.30,000/-, which works out to Rs. 17/- per sq. yard. There is building even on this piece of land. Once again, in the evidence, the Valuer has conceded that he is not in a position to give details about the proximity between the two lands, namely the suit lands and the land involved in the forth instance. Besides, it is conceded that the Valuer had no details about the area and other particulars of the building standing on the said land. No explanation has been offered as to on what basis the Valuer proceeded to deduct only 50% from the consideration amount to arrive at the price of Rs.16/- per sq yard. Even this instance is after the section 4 notification. For the same reasons therefore, even the forth instance will be of no avail to the claimants.

13. On the above reasoning, the claimants have failed to establish that any enhanced market rate should be granted in respect of the suit lands relying on the four instances pressed into service on their behalf.

14. The only point that remains to be considered is that, in the evidence of witness Mr. Wadke, it is clearly asserted that no reasons have been indicated in the award as to on what basis the market value of the said land has been determined at the rate of Rs.6/- per sq. yard. instead of Rs.7/- per sq. yard. as was recommended in the note prepared by the S.L.A.O. after taking into account the relevant factors. There is substance in the submission canvassed on behalf of the claimants that this witness has not been cross examined on this relevant aspect. More over, no evidence has been adduced on behalf of the S.L.A.O. as to what persuaded him to determine the market value of the suit land only at the rate of Rs.6/- per sq. yard. instead of Rs.7/- per sq. yard which was originally recommended by him. In that sense, there is substance in the submission canvassed on behalf of the claimants that the claimants are entitled to enhancement of the market value of the said land atleast at the rate of Rs.7/- per sq. yard. along with consequential benefits as available under the amended provisions of the Act. The Reference in my view therefore, should succeed only to this limited extent.

15. Accordingly this Reference is allowed to the extent that the market value of the suit land will have to be computed on the basis of Rs.7/- per sq.

yard instead of Rs.6/- per sq. yard. as has been computed in the Award. Similarly, consequential benefits of additional interest and solatium under the amended provisions of the 1967 and 1984 Act will have to be provided for on the basis of enhanced market price. The parties have produced computation on the above basis, which is as follows

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1. Market value of land Rs.7/- per sq.yd.

. Total area of land 4719

sq. yard (4719 x 7 = 33,033)

Market value Rs.33,033.00

2. Interest @ Rs.6% from

28.4.63 to 29.10.1986 Rs.46,554.00

3. Interest @ 12% from

28.4.60 to 22.9.86 Rs.1,04,655.78

4. 30% Solatium on market value Rs. 9,909.90

Total Rs.1,94,152.68

Already Deposited Rs.1,66,273.93

Balance amount payable Rs. 27,878.75

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. Accordingly, Reference succeeds in the above terms. No order as to costs.

(A.M. KHANWILKAR,J.)